Filed: 9/3/2020 9:54 AM
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NO. 417-53803-2020

IN THE INTEREST OF	§	**IN THE DISTRICT COURT**
	§	
S.L., J.L. AND L.L.	§	**417TH JUDICIAL DISTRICT**
	§	
CHILDREN	§	**COLLIN COUNTY, TEXAS**

PETITIONER'S MOTION TO STRIKE AMICUS ATTORNEY'S MOTION TO MODIFY TEMPORARY ORDERS AND TO DENY RELIEF

The *Petitioner's Motion to Strike Amicus Attorney's Motion to Modify Temporary Orders and to Deny Relief* is brought by Michael Long, Petitioner in the above entitled and numbered cause, and, in support thereof, would respectfully show the Court as follows:

1. On August 20, 2020, the Court appointed Rachel Li to serve as Amicus Attorney in this matter.

2. A mere eight (8) days following her appointment, on August 28, 2020, Amicus Attorney filed a Motion to Modify Temporary Orders, requesting (among other things) to alter the rights and duties of the Joint Managing Conservators and give Respondent the exclusive rights to consent to medical, dental and surgical treatment involving invasive procedure; the exclusive right to consent to psychiatric and psychological treatment of the children; the exclusive right to represent the children in a legal action and to make other decisions of substantial legal significance concerning the children; the exclusive right to make decisions concerning the children's education.

3. In addition, the Amicus attorney requested that Petitioner's rights under the conservatorship statute be "abated." Although an "abatement" of parental rights is not defined, in essence the Amicus requests that Petitioner/Father have no right to the following:

   i. The right of access to medical, dental, psychological, and educational records of the children.

   ii. The right to consult with a physician, dentist, or psychologist of the children.

iii. The right to consult with school officials concerning the child's welfare and educational status, including school activities.

iv. The right to attend school activities, including school lunches, field trips, and performances.

v. The right to be designated on the children's records as person to be notified in case of emergency.

vi. The right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the children.

vii. The right to consent to medical and dental care not involving an invasive procedure.

4. The motion filed by the Amicus clearly takes a position on conservatorship and asks the court to remove rights from Petitioner/Father and provide exclusive rights to the Respondent/Mother. This Motion to Modify Temporary Orders constitutes an expert opinion and recommendation as to conservatorship and possession and access.

5. Texas Family Code Section 104.008 provides that a person may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child at issue in a suit unless the person has conducted a child custody evaluation. Child custody evaluations must be conducted by individuals with certain qualifications and meet the requirements of Subchapter D of Chapter 107 of the Texas Family Code.

6. It is undisputed that the Amicus attorney does not have the qualifications required of a child custody evaluator, nor has she conducted a child custody evaluation; she is therefore barred from offering opinions and recommendations as contained in her Motion to Modify Temporary Orders. Because the Motion to Modify Temporary Orders contains prohibited opinions and

recommendations, the Court should refuse to hear the Motion and the Motion should be struck.

7. Section 107.001(1) of the Texas Family Code provides a definition of the role of the Amicus attorney, stating that their role is to provide legal services necessary to assist the court in protecting the child's best interest, rather than provide legal services to the child.

8. Section 107.007 prohibits an amicus attorney from submitting a report into evidence or testifying in court (except as provided by Rule 3.08 of the Texas Disciplinary Rules of Professional Conduct). The Motion to Modify Temporary Orders filed by the Amicus attorney in this matter is, in substance, an attempt to submit a report into evidence and offer testimony. The Motion contains specific details regarding the Amicus' actions in the case, details regarding her interviews with the children the subject of this suit, and recites specific opinions and recommendations as to conservatorship and possession and access. As such, the Court should refuse to hear the Motion and the Motion should be struck.

9. Section 107.003 of the Texas Family Code mandates that the amicus, within a reasonable time after the appointment, interview "each person who has significant knowledge of the child's history and condition." The Motion to Modify Temporary Orders reflects that the Amicus interview the parties/parents, but additionally interviewed the Respondent/Mother's Mother (maternal grandmother of the children), and the Respondent/Mother's fiancé. In other words, the Amicus spoke with three individuals (to include Respondent/Mother herself) that support Respondent/Mother's position in this suit, and only spoke to one individual, Petitioner/Father to counter their narrative. Further, Amicus observed the child, S.L. with her Mother, but appears to have wholly failed to observe the children interacting with Petitioner/Father. In other words, the interviews and the investigation of Amicus were not balanced and do not appear to be sufficiently thorough to draw factual conclusions.

10. More to the point, Amicus appears to have wholly failed to interview

Petitioner/Father's wife- the person to whom the child S.L. made an outcry and who authored the affidavit support Petitioner's Petition to Modify the Parent-Child Relationship, nor any other members of Petitioner/Father's family. Nor does it appear that Amicus attorney spoke with any of the physicians who have examined and treated the child, S.L. for alleged sexual abuse, nor does it appear that Amicus attorney requested or reviewed any medical records from those examinations or treatments. Nor does it appear that Amicus attorney has interviewed any law enforcement involved in this case, nor does it appear that Amicus attorney requested or reviewed any records from law enforcement. These individuals all qualify as persons having "significant knowledge of the child's history and condition" with whom Amicus is mandated to conduct interviews, yet inexplicably failed to do so before filing her Motion to Modify Temporary Orders. Because Amicus appears to have failed to conduct interviews required by Section 107.003 of the Texas Family Code prior to filing her Motion to Modify Temporary Orders, the Court should decline to hear the Motion and strike it. Further, because the manner of the Amicus attorney's investigation up to the filing of the Motion appears to be imbalanced in favor of Respondent/Mother, the Court should deny the Motion.

Petitioner/Father Michael Long prays that the Court strike the motion filed by the Amicus, deny all relief requested in her motion, and not consider her motion in any manner or form. Petitioner/Father Michael Long prays for all further and other relief to which he may be entitled at law or in equity.

Respectfully submitted,

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This is to certify that, pursuant to Rule 21 of the Texas Rules of Civil Procedure, a true and correct copy of the foregoing document has been served upon the below-named individual in the following manner as prescribed by Rule 21(a) of the Texas Rules of Civil Procedure on this the 3rd day of September, 2020.

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